

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARTIN HAGOPIAN,

Plaintiff,

vs.

Case No. 04-CV-70475  
HON. GEORGE CARAM STEEH

CORRECTIONAL MEDICAL SERVICES, INC.,  
et al.,

Defendant.

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ORDER DENYING WITHOUT PREJUDICE  
DEFENDANTS CMS' AND KLEINHARDT'S MOTION FOR COSTS (#30)

Defendants Correctional Medical Systems, Inc. ("CMS") and CMS employee Liz Kleinhardt move for \$8,898.33 in costs pursuant to this court's October 18, 2004 Order dismissing without prejudice pro se plaintiff state prisoner Martin Hagopian's 42 U.S.C. § 1983 claims of deliberate indifference to medical needs based on stipulations that included plaintiff's failure to exhaust administrative remedies:

IT IS FURTHER ORDERED that, should plaintiff refile his claims, any instant defendant renamed in a refiled complaint may immediately move the court for relief requiring plaintiff to pay costs and fees before further pursuing the refiled lawsuit. The court hereby retains jurisdiction over the issue of whether plaintiff should be required to pay costs and fees upon refiling this lawsuit against any renamed defendant.

October 18, 2004 Order, at 3.

Plaintiff objected to the October 18, 2004 Order over seven months later on June 30, 2005, arguing his constitutional rights as an indigent prisoner would be violated if he

were required to pay such costs and fees. The court overruled the objection as premature in a July 11, 2005 Order on determining that plaintiff had not shown he had refiled his claims against any of the defendants under a new complaint.

Defendants CMS and Kleinhardt now move for an award of costs and fees under the October 18, 2004 Order of dismissal. Defendants have likewise not proffered evidence, nor even argued, that plaintiff has refiled any of his claims against CMS and/or Kleinhardt in a new complaint. Accordingly,

Defendants' motion for an award of \$8,898.33 in costs pursuant to this court's October 18, 2004 Order is hereby DENIED, without prejudice.

SO ORDERED.

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

Dated: July 25, 2005

#### CERTIFICATE OF SERVICE

Copies of this Order were served on the plaintiff and attorneys of record on July 25, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Secretary/Deputy Clerk